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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,
Plaintiff,

v.

Edward K. Li, in individual and
representative capacity as trustee of
The Li Family Trust dated March 10,
1988;

Debra Li, in individual and
representative capacity as trustee of
The Li Family Trust dated March 10,
1988;

Jianwei Shou; and Does 1-10,

Defendants.

Case: 5:19-cv-08075-EJD

**Notice of Motion and
Memorandum of Points and
Authorities in Support of
Motion for An Award of
Attorney's Fees**

Date: June 25, 2020
Time: 9:00 a.m.
Ctrm: 4 (5th Floor)

Hon. Edward J. Davila

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I. NOTICE OF MOTION

To Defendants Edward K. Li, Debra Li, in individual and representative capacity as trustees of The Li Family Trust dated March 10, 1988, and Jianwei Shou, and to their attorneys on record:

Please take notice that on June 25, 2020 at 9:00 a.m. or as soon thereafter as the matter may be heard in the courtroom of the Honorable Edward J. Davila, located at 280 South 1st Street, San Jose Courthouse, San Jose, California, Plaintiff Scott Johnson will and hereby does move this Court to award his reasonable attorney fees and costs in the amount of \$10,955.00 pursuant to 42 U.S.C. § 12205, California Civil Code § 52(a).

This motion is brought based on the agreement of the parties, having accepted an FRCP Rule 68 offer of judgment. This motion will be based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities, the declarations and other exhibits, and all papers on file in this case.

II. PRELIMINARY STATEMENT

Mr. Johnson is a person with disabilities who uses a wheelchair for mobility. He sued the defendants as owners and operators of the real property located at 520 S. Murphy Avenue, Sunnyvale, California, for failure to provide accessible paths of travel, accessible sales counters and restrooms although the law has required it since 1992. On April 14, 2020, the court entered Judgment in favor of the Plaintiff pursuant to an accepted Rule 68 Offer of Judgment. The judgment entitles Plaintiff to \$6,500 and all reasonable costs and attorney’s fees incurred from his

1 suit.¹ Plaintiff now moves for fees and costs under the Offer of Judgment,
2 and as prevailing party under the Americans with Disabilities Act and
3 Unruh Civil Rights Act.

4 5 **III. REASONABLENESS OF FEES**

6 Under the American with Disabilities Act, attorney's fees are
7 available to a prevailing party²³. Additionally, under the Unruh Civil
8 Rights Act, a defendant "is liable for" any attorney fees" suffered by any
9 person denied the rights" provided for under Unruh. Cal. Civ. § 52(a).
10 Additionally, the Offer of Judgment accepted in this matter explicitly
11 entitles Plaintiff to recovery of attorney's fees. Successful litigants are
12 entitled to reasonable attorney fees "to ensure effective access to the
13 judicial process for persons with civil rights grievances."⁴ "If successful
14 plaintiffs were routinely forced to bear their own attorneys' fees, few
15 aggrieved parties would be in a position to advance the public interest by
16 invoking the injunctive powers of the federal courts. Consequently,
17 recovery is the rule rather than the exception."⁵

18 This is a civil right entitlement, not a windfall. "It must be
19 remembered that an award of attorneys' fees is not a gift. It is just
20

21 ¹ Plaintiff sought injunctive relief in his complaint. The rule 68 offer of
22 judgment addresses the injunctive relief, as such no separate relief
23 is requested here.

24 ² 42 U.S.C. § 12205

25 ³ The Offer of Judgment contains a provision for damages, as well as
26 injunctive relief. As this has resulted in a judicially enforceable
27 judgment, Plaintiff is a prevailing party on both causes of action.

27 ⁴ *Hensley v. Eckerhart* (1983) 461 U.S. 424, 429

28 ⁵ *Jankey v. Poop Deck* (9th Cir. 2008) 537 F.3d 1122, 1131 (internal
citations omitted).

1 compensation for expenses actually incurred in vindicating a public
2 right.”⁶

3 The “fundamental objective” of attorney fee statutes is “to
4 encourage suits effectuating a strong policy by awarding **substantial**
5 **attorney's fees** ... to those who successfully bring such suits . . .”⁷ To
6 accomplish this, the award must be large enough “to entice competent
7 counsel to undertake difficult public interest cases.”⁸ Thus, there is a
8 “requirement of an award of substantial attorney fees” in these disability
9 access civil rights cases.⁹

10 The documentation submitted in support of a request for attorney
11 fees should be sufficient to satisfy the court, or indeed a client, that the
12 hours expended were actual, non-duplicative and reasonable and to
13 appraise the court of the nature of the activity and the claim on which the
14 hours were spent.¹⁰ The billing statements attached as Exhibit 2 meet this
15 standard.

16
17 **A. Hourly Rates**

18 A reasonable hourly rate reflects the skill and experience of the
19 lawyer, including any relevant areas of particular expertise, and the

20 ⁶ *City of Sacramento v. Drew* (1989) 207 Cal. App. 3d 1287, 1304

21 ⁷ *Woodland Hills Residents Ass'n., Inc. v. City Council* (1979) 23 Cal.3d
22 917, 933 (emphasis added).

23 ⁸ *San Bernardino Valley Audubon Society, Inc. v. County of San*
24 *Bernardino* (1984) 155 Cal.App.3d 738, 755

25 ⁹ *Blackwell v. Foley* (N.D. Cal. 2010) 724 F. Supp. 2d 1068, 1076 (a
26 disability access case involving both the ADA and Unruh Civil
Rights Act)

27 ¹⁰ *See Hensley*, 461 U.S. at 437; *Wehr v. Burroughs Corp.* (E.D.Pa. 1979)
28 477 F.Supp. 1012, 1016-18, *modified on other grounds at Wehr v.*
Burroughs Corp. (3rd Cir. 1980) 619 F.2d 276

1 nature of the work performed.¹¹ The reasonable market value of the
2 attorney's services is the measure of a reasonable hourly rate.¹² This
3 standard applies regardless of whether the attorneys claiming fees charge
4 nothing for their services, charge at below-market or discounted rates,
5 represented the client on a straight contingent fee basis, or are in house
6 counsel.¹³

7
8 *1. Rates of Handling Attorneys*

9 This matter was staffed by multiple attorneys, delegating work
10 where appropriate to reduce the overall number of hours and total costs
11 needed on the case. Plaintiff's firm has cultivated an innovative staffing
12 approach¹⁴ in which each attorney is assigned discrete tasks and able to
13 become experienced in narrow aspects of litigation in a short period of
14 time.¹⁵

15 In this system, even newer associates become experienced
16 contributors in their trained niche in short order. Each attorney is able to

17 ¹¹ See *Hensley*, 461 U.S. at 433-34.

18 ¹² *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094

19 ¹³ *Id.*; see also *Welch v. Metropolitan Life Ins. Co.* (9th Cir. 2007) 480 F.3d
20 942, 946

21 ¹⁴ The traditional commercial firm structure has been called into question
22 by multiple courts and scholars. *Chabner v. United of Omaha Life*
23 *Ins. Co.* (N.D Cal., 1999) 1999 WL 33227443, 3*, *affd.*, (2000)
24 225 F.3d 1042; *Nat'l Fed of the Blind v. Target Corp.* (N.D. Cal.,
25 2009) 2009 WL 2390261, 3*; Barak D. Richman, Contracts Meet
26 Henry Ford, 40 *Hofstra Law Review* 77-86 (2011). (Arguing that an
27 assembly approach to legal document generation provides value to
28 clients.) Center for Disability Access agrees that this traditional
specialization occurring within the profession today.

¹⁵ Exhibit 1 - Decl. of Mark Potter ¶ 5-6

1 put a specialized focus on particular tasks at a gain of both efficiency and
2 effectiveness within that task.¹⁶ To the extent any duplication of efforts
3 occurs as a result of this staffing method, counsel has exercised billing
4 judgment and those billing entries are not included in the amount sought
5 for compensation, as anticipated by *Hensley*.¹⁷ In exercising further billing
6 judgment, at no time is an attorney billed for reviewing the work of
7 another, or familiarizing themselves with a file.¹⁸ Anytime counsel would
8 confer with one another regarding any matter, only one attorney is billed.
9 Thus, while the overall number of attorneys that play a role in the
10 development of one of counsel's ADA cases might be higher than that
11 seen in other firms, the *total hours* spent in litigation, and the total costs,
12 are lower than other staffing strategies.¹⁹ This is not just a theoretical
13 claim, as examples can be shown by comparing *Johnson v. Altamira* and
14 *Shaw v. Five M, LLC*, where present counsel sought 9.6 and 9.8 on default
15 judgment against *Chapman v. Schellville Grill*, where another firm billed
16 over 30 hours on a similar case in the same posture.²⁰ Here, counsel
17 engaged in significant litigation, exhausting nearly the entire GO 56
18 process, and still billed barely more than half the time another firm spent
19 on a default judgment! Using these examples, Center for Disability
20

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22 ¹⁶ *Id.*

23 ¹⁷ *Id.* ¶ 7.

24 ¹⁸ *Id.*

25 ¹⁹ *Id.* ¶ 6.

26 ²⁰ *Johnson v. Altamira* (N.D. Ca, 2017) 2017 WL 1383469; *Shaw v. Five M,*
27 *LLC* (N.D. Ca, 2017) 2017 WL 747465; *Chapman v. Schellville*
28 *Grill* (N.D. Ca., 2017) 2017 WL 2888581; *see also Chapman v. NJ*
Properties (N.D. Ca., 2019) 2019 WL 3718585 (another firm billed
162 hours on an ADA/Unruh case that settled prior to trial.)

1 Access plainly demonstrates the real, not just theoretical, value provided
2 by this technique.

3 The billing demonstrates that this division of labor did not incur
4 additional hours and reflects specialization and delegation of tasks to
5 more junior attorneys. A description of each handling attorney's work and
6 billing rates are detailed in the Declaration of Mark Potter.²¹

7
8 2. *History of the Prevailing Rate in the Northern District*

9 Counsel for plaintiff has a long history of litigating ADA claims
10 throughout the state of California over 20+ years, however, the bulk of
11 litigation has been in the Southern and Central Districts until relatively
12 recently. As a result, there is an abundance of attorney's fees history for
13 those Districts. In the firm's first fee motion filed in this District, *Colston v.*
14 *Shakti*,²² the court was unable to establish a prevailing rate based on
15 Northern District rulings and adopted the rates set by the Central District
16 at the time. As a result of the efficiency of General Order 56 in resolving
17 ADA claims, very few cases continue to summary judgment or trial.
18 Subsequently, virtually all fee history in the district has been via default
19 judgments. In many of those early cases counsel sought his Central
20 District rates,²³ and being much lower than those typically awarded in the
21 Northern District, understandably the courts granted those requests
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26 ²¹ Exhibit 1 ¶¶ 4;8-10

27 ²² *Colston v. Shakti* (2015) 5:15-cv-02306-NC

28 ²³ *Johnson v. Altamira* (N.D. Ca, 2017) 2017 WL 1383469; *Shaw v. Five M,*
LLC (N.D. Ca, 2017) 2017 WL 747465.

1 without further analysis, often citing to *Colson*, or other default judgment
2 cases in the Northern District.²⁴

3 As counsel's practice in the Northern District expanded and the
4 Center for Disability Access began hiring dedicated attorneys to work in
5 the Bay Area and litigation expenses increased, the firm began
6 reassessing the proper rate to seek in litigation for cases in the Northern
7 District. Using the Real Rate Report, the Laffey Matrix and reference to
8 cases from other counsel, he began seeking the increased rates sought
9 here. The first judge to address those rates with reference to the *Hensley*
10 test, Judge Laporte in *Love v. Rivendell II*²⁵, agreed that the rates were
11 within the prevailing rates in the community. This was not a formality,
12 simply signing off on fees as requested due to the default nature of the
13 request, as Judge Laporte²⁶ enumerated the qualifications of each
14 attorney with careful analysis citing to a variety of Northern District cases
15 involving counsel other than those present in this case to establish the
16 baseline rate for the Northern District:

17 "These requested rates are consistent with hourly rates
18 that have been approved for attorneys with similar
19 experience and qualifications in this District in ADA
20 cases. See Rodriguez v. Barrita, 53 F. Supp. 3d 1268,
21 1278-79 (N.D. Cal. 2014) (approving \$425 hourly rate of
22 attorney with five years of disability litigation experience
23 and \$550 hourly rate for an attorney with over two

24 ²⁴ *Hasbrouck v. Texaco, Inc.* (9th Cir. 1989) 879 F.2d. 632, 639
25 (suggesting it would be improper to award a rate greater than that
26 sought by counsel).

27 ²⁵ *Love v. Rivendell II* (N.D. Cal. 2019) 18-cv-03907-JST-EDL.

28 ²⁶ This order was reviewed and approved by District Judge Jon S. Tigar on
April 18, 2019.

1 decades of litigation experience); Civil Rights Educ. &
2 Enforcement Ctr. v. Ashford Hospitality Trust, Inc., 2016
3 WL 1177950, at *5 (N.D. Cal. Mar. 22, 2016) (approving
4 hourly rate of \$900 for 1974 law school graduate who
5 previously asserted as Assistant U.S. Attorney General for
6 Civil Rights and has litigated antidiscrimination cases for
7 40 hours, \$750 for a 1991 law school graduate who is
8 considered a leading disability rights class action
9 practitioner, and \$500 for a 2007 law school graduate
10 who litigates civil rights class actions and impact
11 litigation); Elder v. Nat'l Conf. of Bar Examiners, 2011
12 WL 4079623, at *4 n.4 (N.D. Cal. Sept. 12, 2011)
13 (approving rate of \$730 per hour and \$760 per hour for
14 attorneys with approximately three decades of civil rights
15 litigation experience, \$535 per hour for an attorney with
16 8 years of civil rights work, and \$350 per hour for an
attorney with 4 years of experience).”²⁷

17 However, other courts, disagreeing with Judges Laporte and Tigar,
18 have continued to award substantially identical but lower rates referring
19 back to the cases decided based on the 2011 *Rite Aid* Central District case
20 and its progeny without faithfully applying the *Hensley/Kerr* tests. As
21 acknowledged by one court awarding lower rates as requested by counsel,
22 these rates have always been below or at the bottom range of the rates for
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²⁷ *Love v. Rivendell II* (2018) 3-18-cv-03907-EDL.

1 the Northern District of California²⁸, regarded as one of the most
2 expensive areas of practice in the country. Even if the Los Angeles area
3 were considered to be analogous, as Judge Cousins decided when
4 following the Los Angeles area rates in 2016, the Central District has
5 largely abandoned these rates with nearly every judge to review the
6 prevailing rates since July 2019, including Judge Wilson who wrote the
7 original order in *Salinas v. Rite Aid* that began the adoption of the previous
8 rate, determining that substantially increased rates of \$400-\$595 are
9 now appropriate for the Central District.²⁹

11
12 ²⁸ The *Shaw* court referenced previously justified the requested \$425/hr
13 rate with reference to a case noting “In the Bay Area, ‘reasonable
14 hourly rates for partners range from \$560 to \$800, for associates
15 from \$285 to \$510, and for paralegals and litigation support staff
16 from \$150 to \$240.’ ” *Shaw v. Five M, LLC* (N.D. Cal., Feb. 27,
17 2017, No. 16-CV-03955-BLF) 2017 WL 747465, at *5; citing *In*
re LinkedIn User Privacy Litig. (N.D. Cal. 2015) 309 FRD 573, 591-
92), acknowledging that the requested rate was well under market.

18 ²⁹ *Lindsay v. Grupo Glemka* (C.D. Cal. 2019) 2:18-cv-05136-MRW
19 (Docket #40); *Fernandez v. Salgado* (C.D. Cal. 2019) 2:19-cv-
20 01817-SK (Docket #36); *Whitaker v. Hieu* (C.D. Cal. 2019) 2:18-
21 cv-10584-SVW-MRW (Docket #36); *Estrada v. Mirlan* (C.D. Cal.
22 2019) 5:18-cv-01892-JGB (Docket #59); *Lopez v. Getz* (C.D. Cal.
23 2019) 2:18-cv-02152-SJO-MRW (Docket #33); *Garibay v. Shen*
24 (C.D. Cal. 2019) 2:18-cv-09719-RGK-E (Docket #44); *Langer v.*
Gutierrez (C.D. Cal. 2019) 04963-AB-JPR (Docket #24); *Kish v.*
25 *Amberheartclothing, Inc.* (C.D. Cal. 2019) 2:19-cv-01752-CJC-SPx
26 (Docket #18); *Lammey v. Plaza Segundo* (C.D. Cal. 2019) 2:18-cv-
27 04484-JAK-PLA (Docket #20); *Fernandez v. Brothers Auto Repair*
28 (C.D. Cal. 2019) 2-19-cv-05194-DSF-JEM (Docket #18); *Arroyo v.*
Cervantes (C.D. Cal. 2020) 8:19-cv-00182-AG-ADS (J. Selna
presiding) (Docket #40)

1 Plaintiff's counsel seeks rates between \$410 per hour and \$650
2 per hour based on the experience of the attorneys that staffed this matter,
3 as well as the prevailing rates of the community in which this matter is
4 venued. Recognizing the split in authority in this district and believing the
5 rates previously assessed are substantially lower than the prevailing rate,
6 counsel sought an expert analysis from John O'Connor in another matter,
7 an attorney regarded as one of the best in his field in market rate
8 analysis.³⁰ Mr. O'Connor opined, based on his experience, and with
9 reference to recent litigation that the rates sought by counsel in this
10 matter are reasonable.

11 Generally, when determining a reasonable hourly rate, the
12 relevant community is the forum in which the district court sits.³¹ These
13 rates are in line with, and in fact lower, than those awarded in this district
14 for similar litigation. The Northern District of California is no stranger to
15 ADA litigation and has a history of awarding fees in line with the above
16 requested rates, and in many cases even higher rates. A selection of rates
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27 ³⁰ Exhibit 3 – Declaration of John O'Connor

28 ³¹ *Camacho v. Bridgeport Financial, Inc.* (9th Cir. 2008) 523 F.3d 973,
979.

from various attorneys in ADA litigation in the Northern District is appended below:³²

Attorney	Rate	Case	Year
Geoffrey T. Holtz	\$655/hr	<i>Armstrong</i>	2011
Scott LaBarre	\$640/hr	<i>Elder</i>	2011
Tom Frankovich	\$600/hr	<i>NJ Properties</i>	2019
Ernest Galvan	\$560/hr	<i>Armstrong</i>	2011
Celia McGuinness	\$550/hr	<i>Rodriguez</i>	2014
Anna Levine	\$535/hr	<i>Elder</i>	2011
Sara Norman	\$530/hr	<i>Armstrong</i>	2011
Jason Gong	\$650/hr	<i>Dytch</i>	2019
J.D. Legal Assistant	\$360/hr	<i>CREEC</i>	2016
Bill Lee	\$900/hr	<i>CREEC</i>	2016
Tim Fox	\$750/hr	<i>CREEC</i>	2016
Julie Wilensky	\$500/hr	<i>CREEC</i>	2016
Celia McGuinness	\$700/hr	<i>Martin</i>	2018
Paul Rein	\$700/hr	<i>Martin</i>	2018
Russell Handy	\$650/hr	<i>Rivendell II</i>	2019
Phyl Grace	\$650/hr	<i>Rivendell II</i>	2019

³² *Armstrong v. Brown* (N.D. Cal. 2011) 805 F. Supp. 2d 918, 922-23 (Appendix A); *Elder v. National Conference of Bar Examiners* (N.D. Cal. Sept. 12, 2011) C-11-00199-SI, 2011 WL 4079623; *Rodriguez v. Barrita, Inc* (2014) 53 F.Supp.3d 1268; *Dytch v. Lazy Dog Restaurants, LLC* (N.D. Cal., 2019) 2019 WL 3928752; *Martin v. Diva Hospitality Group, Inc.* (2018) 2018 WL 6710705; *Civil Rights Education and Enforcement Center v. Ashford Hospitality Trust, Inc.* (2016) 2016 WL 1177950; *Chapman v. NJ Properties* (2019) 5:16-cv-02893-EJD; *Johnson v. Oak Creek* (2019) 5:18-cv-04645-EJD.

Farrell Goodman	\$410/hr	<i>Rivendell II</i>	2019
Richard Schramm	\$860/hr	<i>Oak Creek</i>	2019

As is demonstrated by the table above, counsel's requested rates are in line with others awarded within this community, despite the prior recent awards suggesting a lower rate. Even a non-attorney legal assistant was awarded a rate just \$50/hr less than the lowest rates sought by counsel in this case. According to the Ninth Circuit, a district court commits reversible error by focusing only on fee awards previously awarded to a particular attorney without taking into account declarations by the attorneys explaining why an increased hourly rate is appropriate and determining what the prevailing market rate is.³³

Not only are plaintiff's counsel's requested rates fully consistent with the market but they should expect to receive similar compensation based on counsel's experience. Both state and federal law advocates for full and substantial compensation for disability civil rights attorneys:

Per statutory provisions by the United States Congress and the California Legislature to ensure that there are attorneys willing to perform the important function of securing the rights of disabled persons to "full participation in the social and economic life of the state" and to "full and equal access," it is necessary to provide substantial compensation for this work. Encouraging competent attorneys to handle ADA Title III cases is necessary for effective enforcement: former California Attorney General Dan Lungren, in a 1993 Opinion, held that California building officials could not

³³ *Roberts v. City of Honolulu* (9th Cir. 2019). 938 F.3d 1020, 1024.

1 independently enforce the ADA, and that enforcement was
2 left primarily to private lawsuits.³⁴

3 Present counsel's disability rights work has helped to shape ADA
4 law with numerous, precedent setting opinions that were relied on by the
5 above cases, including, but not limited to the following published cases:
6 *Lozano v. C.A. Martinez Family Ltd. Partnership*, 129 F.Supp.3d 967 (S.D.
7 Cal. 2015); *Fortyune v. City of Lomita*, 766 F.3d 1098 (9th Cir. 2014);
8 *Cortez v. City of Porterville*, 5 F.Supp.3rd 1160 (E.D. Cal. 2014); *Johnson v.*
9 *Wayside Prop., Inc.*, 41 F.Supp.3d 973 (E.D. Cal. 2014); *Daubert v. Lindsay*
10 *Unified School District*, 760 F.3d 982 (9th Cir. 2014); *Munson v. Del Taco,*
11 *Inc.*, 46 Cal.4th 66 (2009); *Nicholls v. Holiday Panay Marina, L.P.*, 93
12 Cal.Rptr.3d 309 (Cal. App. 4th 2009); *Ortiz v. Accredited Home Lenders,*
13 *Inc.*, 639 F. Supp. 2d 1159 (S.D. Cal. 2009); *Kittok v. Leslie's Poolmart,*
14 *Inc.*, 687 F. Supp. 2d 953 (C.D. Cal. 2009); *Deanda v. Sav. Inv., Inc.*, 267 F.
15 App'x 675, 676 (9th Cir. 2008); *Miller v. California Speedway Corp.* (9th
16 Cir. 2008) 536 F.3d 1010; *Munson v. Del Taco, Inc.*, 522 F.3d 997 (9th
17 Cir. 2008); *Grove v. De La Cruz*, 407 F. Supp. 2d 1126 (C.D. Cal. 2005);
18 *Fortyune v. American Multi-Cinema, Inc.*, 364 F.3d 1075 (9th Cir. 2004);
19 *Pickern v. Holiday Quality Foods, Inc.*, 293 F.3d 1133 (9th Cir. 2002);
20 *Wyatt v. Ralphs Grocery Co.*, 65 Fed.Appx. 589 (9th Cir. 2003); *Botosan v.*
21 *Paul McNally Realty*, 216 F.3d 827 (9th Cir. 2000); *Wyatt v. Liljenquist*, 96
22 F. Supp. 2d 1062 (C.D. Cal. 2000).

23 "Indeed, were it not for the efforts of those attorneys willing to
24 undertake the representation of ADA plaintiffs, there would be little, if
25
26
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28 _____
³⁴ *Blackwell v. Foley* (N.D. Cal. 2010) 724 F. Supp. 2d 1068, 1075

1 any, enforcement of this landmark statute.”³⁵ Based on the evidence of
2 market rate, the skill of the lawyers representing the Plaintiff, and the
3 public interest in encouraging the private bar in enforcing the ADA,
4 plaintiff’s counsels’ requested rates should be approved by this court.

5
6 **B. Hours Reasonably Expended**

7 Independent from establishing the rate to apply, the Court should
8 determine the number of hours reasonably expended in this litigation:
9 The starting point of every fee award, once it is recognized that the
10 court’s role in equity is to provide just compensation for the attorneys,
11 must be a calculation of the attorneys’ services in terms of the time he has
12 expended on the case. Anchoring the analysis to this concept is the only
13 approach that can claim objectivity, a claim which is ‘obviously vital’ to
14 the prestige of the bar and the courts.” *Serrano v. Priest*, 20 Cal.3d 25, 49
15 (1977), citing *Lindy Bros. Builders, Inc. of Phila. v. American Radiator*, 487
16 F.2d 161 (3rd Cir 1973).

17 In prosecuting this matter within the guidelines imposed by
18 General Order 56, the case was not over litigated. Defendant served a
19 Rule 68 offer of judgment in lieu of participating in the required site
20 inspection and the plaintiff promptly accepted. The case reasonably and
21 necessarily involved pre-filing investigation, complaint drafting, emails,
22 letters, phone conversations, and court filings, and this motion and the
23 other trappings of a litigated case in which a Plaintiff could prevail.

24 Plaintiff’s attorneys have expended more than 13 hours to date
25 and, as agreed by the parties, estimate another 8 hours for dealing with
26 an opposition brief, drafting the reply, and attendance at oral argument.

27
28 ³⁵ *Hansen v. Deercreek Plaza, LLC* (S.D.Fla. 2006) 420 F.Supp.2d 1346,
1349

1 As is clear from the billing statement, there has been no overbilling in this
2 case and Plaintiff has attempted to specialize all hours spent to reduce the
3 total number of hours involved in the matter.

4 All of the hours submitted to the court in the accompanying
5 declaration of Mark Potter³⁶ and the attached billing were reasonably
6 incurred in the prosecution of this case. Each discrete task should be
7 viewed with reference to the amount of time spent doing it and assessing
8 if that task was reasonably incurred and if that task was accomplished in a
9 reasonable amount of time.

10 11 **IV. HENSLEY FACTORS**

12 In *Hensley v. Eckerhart*,³⁷ the Supreme Court stated that the
13 lodestar is the “presumptively reasonable fee amount” and that the Court
14 can adjust upward or downward by a multiplier in “rare” or “exceptional”
15 cases only.³⁸ Additionally, the *Hensley* court outlined twelve factors that a
16 Court may consider when determining the appropriate fee award or any
17 departure from it. Many of the factors are already subsumed into the
18 lodestar discussion but plaintiff will briefly discuss each factor. Plaintiff
19 seeks no modification of the lodestar.

20 21 **A. Time and Labor Required**

22 As stated above, the plaintiff showed billing judgment and
23 restraint. The case was not over litigated and plaintiff’s counsel expended
24

25
26 ³⁶ Exhibit 1

27 ³⁷ *Hensley v. Eckerhart* (1983) 461 U.S. 424

28 ³⁸ *Id.* at 433; *Van Gerwen v. Guarantee Mutual Life*, 214 F.3d 1041, 1045
(9th Cir. 2000); *see also Welch*, 480 F.3d at 946.

1 less than two full work days. The plaintiff seeks no multiplier as the time
2 expended will be compensated by the lodestar.

3
4 **B. Novelty and Difficulty of Issues**

5 The Americans with Disabilities Act itself and its interaction with
6 California State Law is ever evolving and involves new issues and new
7 challenges on a constant basis. Aside from the fairly novel area of
8 Americans with Disabilities Act work in general, this case presented no
9 significant legal issues of first impression and plaintiff seeks no multiplier
10 based on this issue as counsel's rate incorporates this specialized
11 expertise.

12
13 **C. Skill Required to Perform Legal Service**

14 The Americans with Disabilities Act was passed in 1990 and the
15 Unruh Civil Rights Act was amended in 1992 to incorporate the ADA.
16 There are only a handful of attorneys with expertise in the area. Access
17 under Title III of the Americans with Disabilities Act is predicated upon
18 requirements to provide access to existing public accommodations, new
19 construction and alterations to existing buildings. Those requirements in
20 existing public accommodations turn on whether the removal of
21 architectural barriers is "readily achievable." In turn, there is a plethora
22 of federal regulations, Department of Justice advisory opinions,
23 interpretive manuals and case law that is argued by both plaintiffs and
24 defendants as to what constitutes architectural barriers and the extent of
25 the remedial measures necessary, if any, to remove the architectural
26 barrier. Furthermore, there is the overlaying application of Title 24 of the
27 California Code of Regulations requirements to public accommodations
28

1 which were constructed or altered after 1982, and the American National
2 Standards Institute (ANSI) between 1970 and 1982.

3 A successful prosecution of disability access cases is dependent
4 upon a plaintiff's attorney having a thorough knowledge of the ADA and
5 all its implementing regulations, Americans With Disabilities Act
6 Accessibility Guidelines, Title 24 of the California Code of Regulations,
7 ANSI standards, and the relevant sections for the California Health and
8 Safety Code, the California Civil Code, and the California Government
9 Code. In addition, an intimacy with the body of case law which has
10 developed around the ADA (among which over two dozen published
11 decisions were handled by plaintiff's counsel's office) and state statutory
12 schemes, and the ability to couple this knowledge with a practical,
13 strategic approach to interfacing with defendants, their own personal
14 counsel, insurance defense attorneys, insurance carriers and the Court is
15 absolutely essential.

16 In short, handling disability access cases demand the services of an
17 attorney trained and specializing in the area of law. This case did not
18 present specialized or skillful challenges and was a fairly straight-forward
19 application of the law.
20

21 **D. Preclusion of Other Work**

22 Plaintiff's attorneys have spent around two full work days in
23 prosecuting this case. That time could not be used, simultaneously, for
24 other cases or other clients. Thus, the work on this case precluded other
25 work that could have and would have been done and billed for.
26 Nonetheless, the lodestar fully compensates for that work.
27
28

1 **E. Customary Fee**

2 As covered above, the rates and fees charged by plaintiff's counsel
3 are market rates.

4
5 **F. Fixed or Contingent Fee**

6 As is the case with virtually all civil rights cases, the fees in this
7 case were contingent upon prevailing. Had the plaintiff not prevailed, the
8 plaintiff's attorneys would not be able to recover monies to compensate
9 them for the outlay of time spent in prosecuting this case. Nonetheless,
10 plaintiff's counsel is not seeking a multiplier.

11
12 **G. Time Limitations**

13 There were no unique time limitations imposed by either the client
14 or the circumstances.

15
16 **H. Amount Involved and Results Obtained**

17 The Plaintiff brought claims under the ADA and a companion
18 damages claim under Unruh Civil Rights Act for violations of his federally
19 guaranteed rights under the ADA and sought remedies under both acts.
20 It's difficult to measure the "damage" caused by denial of access. Thus,
21 the Unruh Civil Rights Act has a minimum that a defendant must pay. In
22 an Unruh case before the California Supreme Court, the defendant
23 violated the law but argued that it had "not harmed a single hair on the
24 plaintiff's head or subjected him to the slightest deprivation or
25 embarrassment of any kind."³⁹ The Court stated, "by passing the Unruh
26 Act, the Legislature established that arbitrary sex discrimination by
27

28

³⁹ *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 .

1 businesses is per se injurious. Section 51 provides that all patrons are
2 entitled to equal treatment. Section 52 provides for minimum statutory
3 damages of \$250 [previous minimum] for every violation of section 51,
4 regardless of the plaintiff's actual damages.” *Id.* at 33. The minimum
5 damage award that was in effect for the plaintiff’s case was \$4,000.
6 Courts just don’t award that much money for violations that do not
7 involve impact injury. For example, in one of the only published decision
8 to actually identify a damage award: *Boemio v. Love's Restaurant*,⁴⁰, the
9 court held a bench trial, found for the plaintiff, and awarded \$1,000 (then
10 the minimum) although the plaintiff had to urinate in the parking lot. This
11 case was no different from other access denial cases with respect to
12 damages. It simply never involved large sums of money. Here, Mr.
13 Johnson received \$6,500 damages agreed to in this matter, injunctive
14 relief, and an explicit agreement to attorney’s fees. He easily qualifies as a
15 prevailing party entitled to full attorney’s fees and costs.

16
17 **I. Experience and Ability of Attorneys**

18 See discussion under “Hourly Rates” above.
19

20 **J. Undesirability of the Case**

21 This case, like many small dollar civil rights cases, is low on the
22 desirability scale. The clientele is largely very low income or indigent.
23 Payment is completely dependent upon winning. It is usually big
24 business, specialized defense counsel, and insurance companies on the
25 other side. However, no adjustment is requested.
26
27

28

40 *Boemio v. Love's Restaurant* (S.D. Cal. 1997) 954 F.Supp. 204

1 **K. Nature of Relationship with Client**

2 The Center for Disability Access has no relationship with Mr.
3 Johnson other than in representing him in his ADA/Unruh claims.

4
5 **L. Awards in Similar Cases.**

6 This matter is discussed above.

7
8 **V. LITIGATION COSTS**

9 The plaintiff seeks \$875.00 in costs. This includes traditional costs
10 such as the service cost (\$75) and the filing fee (\$400) as well as the
11 litigation expenses that includes the investigation (\$400). Section 505 of
12 the Americans with Disabilities Act (42 U.S.C. § 12205) authorizes
13 reasonable attorney's fees, including "litigation expenses and costs," in
14 any action brought under the Act. This includes all costs normally
15 associated with litigation including investigative costs:

16 According to committee reports, Congress included the term
17 "litigation expenses" in order to authorize a court to shift
18 costs such as expert witness fees, travel expenses, and the
19 preparation of exhibits. See H.R. Rpt. No. 101-485(III) at
20 73, reprinted in 1990 U.S.C.C.A.N. 445, 496 (Report of the
21 Committee on the Judiciary) ("Litigation expenses include
22 the costs of expert witnesses. This provision explicitly
23 incorporates the phrase 'including litigation expenses' to
24 respond to rulings of the Supreme Court that items such as
25 expert witness fees, travel expenses, etc., be explicitly
26 included if intended to be covered under an attorney's fee
27 provision."); H.R. Rpt. No. 101-485(II) at 140, reprinted in
28 1990 U.S.C.C.A.N. 303, 423 (Report of the Committee on

1 Education and Labor) (“Litigation expenses include the
2 costs of experts and the preparation of exhibits.”).⁴¹

3 “The federal statute, unlike the state statutes, explicitly provides for not
4 only attorney's fees but also litigation expenses and costs.”⁴²
5

6 **VI. CONCLUSION**

7 The plaintiff respectfully requests that his motion be granted and
8 he be awarded \$11,820.00.
9

10 Dated: April 28, 2020

CENTER FOR DISABILITY ACCESS

11
12 By: /s/ Dennis Price
13 Dennis Price, Esq.
14 Attorney for Plaintiff
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26 _____
27 ⁴¹ *Lovell v. Chandler* (9th Cir. 2002) 303 F.3d 1039, 1058

28 ⁴² *Saldana-Neily v. Taco Bell of Am., Inc.* (N.D. Cal. 2008) 2008 WL
793872, *3